

AMENDED IN SENATE MAY 5, 1998
AMENDED IN SENATE APRIL 13, 1998
AMENDED IN SENATE MARCH 23, 1998

SENATE BILL

No. 2174

Introduced by Senator Rainey

February 20, 1998

An act to *add Section 6257.5 to, and to add Chapter 3* (commencing with Section 15650) to Part 9 of Division 3 of Title 2 of, the Government Code, relating to the State Board of Equalization.

LEGISLATIVE COUNSEL'S DIGEST

SB 2174, as amended, Rainey. State Board of Equalization: records.

The California Public Records Act provides that except for exempt records, every state or local agency, upon request, shall make records available to any person upon payment of fees to cover costs.

Existing law generally prohibits members, employees, and agents of the State Board of Equalization from divulging or making known in any manner not provided by law specified information concerning the business affairs of companies reporting to the board.

This bill would ~~require the executive director of the board to make open and available to the public the text of any public record having interpretive value in the administration of tax by the board after deleting specified information from the text. It would provide administrative and judicial remedies~~

~~with respect to requests for disclosure made pursuant to the bill~~ provide certain guidelines with regard to the release of records under the act in light of the holding in *State Board of Equalization v. Superior Court*, 10 Cal. App. 4th 1177. The bill would also require the State Board of Equalization to adopt regulations to establish procedures and guidelines to access public records.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1.

2 SECTION 1. Section 6257.5 is added to the
3 Government Code, to read:

4 6257.5. (a) The Legislature hereby finds and declares
5 that the State Board of Equalization was sued for denying
6 requests for public records under this chapter. The
7 request for records involved the board's working
8 procedure in that the records showed the board's practice
9 in interpreting and applying sales and use tax regulations.
10 In ruling against the board in *State Board of Equalization*
11 *v. Superior Court*, 10 Cal. App. 4th 1177, the Court of
12 Appeal unequivocally affirmed the right of all persons to
13 obtain public records from government agencies. The
14 court stated that "[t]here is manifest public interest in the
15 avoidance of secret law and a correlative interest in the
16 disclosure of a public agency's working law." "The
17 revelation of a public agency's working law promotes its
18 accountability to the public and the consistent,
19 predictable, and nonarbitrary application and
20 enforcement of the law."

21 (b) It is the intent of the Legislature in enacting this
22 section to codify the ruling of *State Board of Equalization*
23 *v. Superior Court* and to thereby ensure its application to
24 all agencies subject to this chapter. The following shall
25 apply with regard to the release of records pursuant to
26 this chapter:

27 (1) The size or magnitude of a request for documents
28 under this chapter does not determine whether the

1 request reasonably describes identifiable records for
2 purposes of Section 6257. A request reasonably describes
3 identifiable records if the records can be located with
4 reasonable effort.

5 (2) Whether or not an agency is bound by its internal
6 documents or working law with respect to the
7 dispensation or adjudication of future disputes may not be
8 used by the agency as a justification to withhold public
9 records. The public interest is served by access to an
10 agency's public records, regardless of the precedential
11 value of the records.

12 (3) The fact that a public record may contain some
13 confidential information, including confidential
14 information about a taxpayer, is not a justification to
15 withhold the entire document. Pursuant to Section 6257,
16 the confidential information portion that is reasonably
17 segregable shall be deleted prior to providing a copy of
18 the record.

19 (4) This chapter does not allow limitations on access to
20 a public record based upon the purpose for which the
21 record is being requested.

22 (5) In order to provide the requesting party with the
23 means to reasonably describe an identifiable record, the
24 agency shall, upon request, prepare a list of the public
25 records the agency maintains on the requested subject.

26 SEC. 2. Chapter 3 (commencing with Section 15650)
27 is added to Part 9 of Division 3 of Title 2 of the
28 Government Code, to read:

29
30 CHAPTER 3. ACCESS TO PUBLIC RECORDS

31
32 ~~15650. The Legislature finds and declares all of the~~
33 ~~following:~~

34 ~~(a) It has come to the attention of the Legislature that~~
35 ~~the State Board of Equalization was sued for denying~~
36 ~~requests for public documents under the California~~
37 ~~Public Records Act. The documents in question depicted~~
38 ~~the board's working law as it revealed the board's practice~~
39 ~~in interpreting and applying the sales and use taxes. In~~
40 ~~ruling against the board in the case of State Board of~~

~~Equalization v. Superior Court (10 Cal. App. 4th 1177), the Court of Appeal chastised the board by declaring that “this case concerns secret law” and unequivocally affirmed the right of individuals to obtain public documents from government agencies.~~

~~(b) There is manifest public interest in the avoidance of “secret law” and a correlative interest in the disclosure of a public agency’s working law. The revelation of a public agency’s working law promotes its accountability to the public and the consistent, predictable, and nonarbitrary application and enforcement of the law. In addition, the full disclosure of tax law application and interpretation will encourage voluntary tax compliance and therefore increase state revenues.~~

~~(c) It is the intent of the Legislature in enacting this chapter to codify the ruling of State Board of Equalization v. Superior Court (10 Cal. App. 4th 1177) and to establish procedures and guidelines in order to facilitate maximum accessibility of public documents.~~

~~15650.5. Except as otherwise provided in this chapter, the text of any public record having interpretive value in the administration of the sales and use tax by the State Board of Equalization shall be open and available to the public as the board shall provide by regulation, pursuant to Section 15653.~~

~~15651. Unless the contrary is stated or clearly appears from the context, the definitions set forth in this section shall govern the interpretation of this chapter.~~

~~(a) “Board” means the State Board of Equalization.~~

~~(b) “Board staff” means any employee of the State Board of Equalization.~~

~~(c) “Confidential information” means that information prohibited from disclosure by Section 7056 of the Revenue and Taxation Code, or pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1, or any information that identifies or describes the persons to whom the public record pertains, or information about other persons with respect to whom a notation is made or are identified in the public record, or information about~~

1 other persons that may be identified through facts
2 contained in the public record that would link the
3 information disclosed to the individual to whom it
4 pertains.

5 (d) “Executive director” means the Executive
6 Director of the State Board of Equalization.

7 (e) “Public record” means any public record as
8 defined in subdivision (d) of Section 6252, including, but
9 not limited to, operation memoranda, annotation letters,
10 current legal digests, intra-agency memoranda having
11 interpretive value and maintained in the ordinary course
12 of business, general bulletins, legal information bulletins,
13 board audit and compliance manuals, board KWIC
14 indexes, board hearing minutes, and training course
15 materials utilized in the training of the board staff.

16 15652. (a) Before making any record open or
17 available to public inspection pursuant to this chapter,
18 the executive director shall delete all of the following:

19 (1) Confidential information.

20 (2) Information specifically exempted from disclosure
21 by any other statute that is applicable to the board.

22 (3) Trade secrets and commercial or financial
23 information obtained from a person and that is privileged
24 or confidential.

25 (4) Information the disclosure of which would
26 constitute a clearly unwarranted invasion of personal
27 privacy.

28 (b) The executive director shall determine the
29 appropriate extent of these deletions. Except in the case
30 of intentional or willful disregard of this section, the
31 executive director shall not be required to make the
32 deletions, nor be liable for failure to make the deletions,
33 unless the executive director has previously agreed to
34 make the deletions.

35 15653. (a) The board shall promulgate regulations
36 establishing procedures and administrative remedies
37 with respect to any requests for disclosure of any public
38 record. These regulations shall encourage and facilitate
39 maximum accessibility of documents to the public.

~~(b) Any person who has exhausted the administrative remedies prescribed pursuant to subdivision (a) with respect to a request for disclosures may file a petition in superior court for an order requiring that any public record, or portion thereof, be made open and available to the public. The court shall examine the matter de novo and may examine the entire text of the public record in order to determine whether the public record or any part thereof shall be open and available to the public. The burden of proof with respect to the issue of disclosure of any information shall be on the executive director and any other person seeking to restrain disclosure.~~

~~(c) The court shall make a decision with respect to any petition pursuant to the remedies described in subdivision (a) at the earliest practical date and the court of appeal shall expedite any review of the decision in every way possible.~~

~~15654. If the court finds that the executive director's refusal to disclose a public record is not justified, the court shall award all costs and reasonable attorney fees to the plaintiff, provided that the plaintiff substantially prevails in any litigation filed pursuant to Section 15653.~~

~~15655. (a) The text of a public record dated on or after January 1, 1999, shall be made open and available to the public no later than 10 days after a request for the record has been made to the executive director.~~

~~(b) The executive director is authorized to assess the actual cost involving these prospective requests for the duplication of any public record made open and available to the public pursuant to this chapter. Any fee shall exclude the cost of any search and retrieval of these documents and shall not exceed ten cents (\$0.10) per page. The costs involved in reviewing these documents to ensure that they reflect the current law, or costs incurred in excising confidential information pursuant to subdivision (c) of Section 15651 and Section 15652 shall not be passed on to the person making the request for the documents.~~

~~15657. (a) The text of a public record dated prior to January 1, 1999, shall be made open and available to the~~

1 ~~public no later than 30 days after a request for the record~~
2 ~~has been made to the executive director.~~

3 ~~(b) The executive director is authorized to assess the~~
4 ~~direct costs involving these retrospective requests for the~~
5 ~~production of any public record made open and available~~
6 ~~to the public pursuant to this chapter. The fees associated~~
7 ~~with this section may include the cost of any search and~~
8 ~~retrieval of these documents, the costs involved in~~
9 ~~reviewing these documents to ensure that they reflect~~
10 ~~current law, or costs incurred in excising confidential~~
11 ~~information pursuant to subdivision (c) of Section 15651~~
12 ~~and Section 15652, but in no event shall the fees exceed~~
13 ~~three dollars (\$3) per document and ten cents (\$0.10) per~~
14 ~~page.~~

15 ~~15658. The executive director shall furnish any public~~
16 ~~record without charge or at a reduced charged if he or she~~
17 ~~determines that waiver or reduction of the fee is in the~~
18 ~~public interest because furnishing the public record can~~
19 ~~be considered as primarily benefiting the taxpayers.~~

20 ~~15659. The executive director shall not be required to~~
21 ~~make available to the public any technical advice~~
22 ~~memorandum and any related public record involving~~
23 ~~any matter that is the subject of a civil fraud or criminal~~
24 ~~investigation or jeopardy determination, until after any~~
25 ~~action relating to that investigation or determination is~~
26 ~~completed.~~

27 ~~15660. (a) The executive director shall maintain a~~
28 ~~permanent system of records of accounting of all requests~~
29 ~~for inspection or disclosure of public records.~~

30 ~~(b) The executive director shall also maintain a~~
31 ~~permanent system of records or accounting of all public~~
32 ~~records dated on or after January 1, 1999, listed by subject~~
33 ~~matter, and make this information available to the~~
34 ~~general public to facilitate access to this information~~
35 ~~through the disclosure procedures set forth in this~~
36 ~~chapter.~~

37 ~~15650. For purposes of this chapter, "public record"~~
38 ~~means any public record as defined in subdivision (d) of~~
39 ~~Section 6252.~~

1 15651. (a) *In light of State Board of Equalization v.*
2 *Superior Court*, 10 Cal. App. 4th 1177, in which the Court
3 *of Appeal affirmed an order of the superior court that the*
4 *State Board of Equalization disclose its working law, it is*
5 *the intent of the Legislature, in enacting this chapter, to*
6 *establish procedures and mechanisms that facilitate*
7 *maximum accessibility to the public records maintained*
8 *by the board.*

9 (b) *The Legislature finds and declares that greater*
10 *disclosure and better understanding of tax laws and*
11 *regulations will encourage increased tax compliance.*

12 15652. *Pursuant to Section 6253, the State Board of*
13 *Equalization shall promulgate regulations to establish*
14 *procedures and guidelines to access public records. These*
15 *regulations shall facilitate maximum public accessibility*
16 *to the board's public records. These regulations shall*
17 *specifically identify and describe the types of public*
18 *records pertaining to the tax and the fee programs*
19 *maintained by the board.*

20 15653. *A copy of a disclosable public record shall be*
21 *promptly made open and available to any person making*
22 *a request pursuant to the California Public Records Act*
23 *(Chapter 3.5 (commencing with Section 6250) of*
24 *Division 7 of Title 1). In no case, however, shall the*
25 *records be provided by the State Board of Equalization*
26 *later than 60 days after the request was made. The board*
27 *shall consider and may adopt regulations to require access*
28 *to public records within a shorter time.*

29 15654. *The State Board of Equalization shall study and*
30 *report to the Legislature, on or before January 1, 2000, on*
31 *the feasibility and cost of creating and maintaining a*
32 *subject matter index of public records pertaining to the*
33 *tax and fee program administered by the board.*

